In the Supreme Court of the United States

No. 309

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION LOCAL 309, et al,

Petitioners

vs.

A. E. HANKE, L. J. HANKE, R. R. HANKE, et al., etc.,

Respondents,

ON CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF OF RESPONDENTS

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CASES CITED

STATUTES

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THE OPINION OF THE COURT BELOW

The opinion of the Supreme Court of the State of Washington affirming the judgment of the trial court which granted a restraining order against the above petitioners as prayed for, is reported in Volume 133, No 11, Washington Decisions, at page 644. This opinion appears (at pp. 18-37) in the Transcript of Record.

STATEMENT OF THE CASE

The respondents were father and his three sons engaged in the business of repairing automobiles, selling

gasoline and automobile accessories and used automobiles, as the Atlas Auto Rebuild, in Seattle, and they worked at the business as and when they found it necessary. No one of them belonged to any union and they employed no help but did all the work themselves.

The petitioners were the Teamsters Union Local 309 organized as a labor union, a local Union No. 882, a labor union closely affiliated with 309 above, which embraced among its membership persons employed in the business of selling used cars (R. 11).

That on or about June 12, 1946, said local union No. 882 entered into a collective bargaining contract with what was known as the Independent Automobile Dealers Association of Seattle, to the effect (R. 13) that all show rooms and used car lots would close not later than 6:00 P.M. on all week-days and on Saturdays, Sundays and holidays, and that a sign should be posted to that effect. Respondents nor any of them ever entered into said contract.

Complaints reached petitioners that respondents were violating in regard to the agreement as to the hours and days of labor, and although they were not parties to the agreement, officers or agents of said local 882 on January 27, 1948, visited respondents' place of business and conferred with all of them together. A union shop card, secured by the party from whom respondents had purchased the business a couple of years

prior, and which had been left there by him, was in a window of the shop. These representatives said they would have to remove it unless at least one of the respondents joined the union or unless they signed up the agreement to abide by union rules and regulations in regard to hours and days of labor (R. 14).

Respondents took down the sign and handed it to these agents and said they could not sign the agreement and continue in business.

Thereafter, on February 12, 1948, a single picket appeared, wearing the usual sandwich sign, which read the same on both sides, in large letters: "Union people look for the union shop card, etc." This picket remained all day each day patroling up and down in front of and alongside respondents' place of business, it being on a corner, talked to people who entered and took down the motor license numbers of respondents' patrons. Immediately thereafter, respondents' business fell off, and drivers for supply houses refused to deliver parts and other materials, and respondents were required to go to the dealers in their own trucks and secure such materials in order to carry on their business.

This picketing continued until restrained on February 24, 1948, by order of court.

Was not the picketing really calculated to force respondents to commit an unlawful act under our "Little

Norris-LaGuardia Act," to wit: To force them to join the Union, or worse, to sign a contract with the union to do exactly as the union dictated, regardless of their right to decline to associate with their fellows and to have full freedom of assocation as provided in the Act.

ARGUMENT

Section 2 of Chapter 7 of the Laws of Washington, 1933, Extraordinary Session, (Rem. Rev. Stat. Supp. §7612-2) provides in part:

> "... the public policy of the State of Washington is hereby declared as follows:
>
> "Whereas, under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, *though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from interference, restraint, or coercion of employers of labor,* or their agents, *in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protections;* ..." (Emphasis supplied)

The picket line was thrown around respondents' business place to enforce this demand.

In the case at bar there was no employer and no employee, but the picketing informed them that they must join the Union or quit work. Under the above Statute, the picketing was unlawful.

In *Wilbank vs. Chester and Delaware Counties Bartenders, Hotel and Restaurant Employers' Local* (Pa.) Atl. Rep. 2nd. 60 at page 21, is a case where a majority of plaintiff's employees had not joined defendant Union and did not want to and plaintiffs refused to sign a contract which would require them to employ only union men, because they did not want to compel or coerce their employees to join a Union. The picketing was then started to compell them to force their employees to join the Union or be discharged.

The trial court held the picketing for that purpose was unlawful and enjoined it. Plaintiff offered no objection to the Union trying to persuade the men to join a Union. In this case too, men trying to make deliveries, as a result of the picket line, refused to do so, although they had before.

The Court held that the actions of the Union calculated to coeree the employers to commit a violation of the Penn. Labor Act of 1937 and the National Labor Relations Act of 1935.

"That the employees seem to prefer to exercise the right of not joining any union, a right which is protected by Sec. 5 of the Penn. Labor Relations Act of 1937. That Sec. 6 of the same Act makes it "an unlawful labor practice for an employer to interfere with or to coerce employees in the exercise of the rights guaranteed by the Act." The Court further said that such an organized effort to force plaintiffs to violate the law was not exercised by saying, as appellants' brief does, that picketing was done "solely for organizational purposes by persons engaged in the same trade," and went on to say that to do what was demanded, it was manifest that the plaintiffs would have to engage in an unfair labor practice as defined by the statutes just referred to; and in contravention thereof, to discharge over three-fourths of the employees involved—in effect to do something they could not legally do.

In the concurring opinion in *Bakery and Pastry Drivers and Helpers Local* 802 *vs. Wohl,* 315 U.S. 769, Judge Douglas said:

> "Picketing by an organized group is more than free speech, since it involves patrol of a particular locality, and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated. Hence those aspects of picketing make it a subject of restrictive legislation."

The Washington Supreme Court, in its opinion herein (R. 27) quoted from the *Shively* case, 6 Wn.

(2d) 560, and said that in that case they had to consider the question whether the constitutional guaranty of freedom of speech, as interpreted by the U.S. Supreme Court, is an absolute right which may be exercised without qualification, or whether, like other rights, it must be exercised with reasonable regard for the conflicting rights of others. Our Court went on to say "In the instant case, we are concerned with challenging appellants' right to carry on lawful businesses free from interference and respondents' (picketing members of the Union) right to freedom of speech. Neither of these rights is absolute, in the sense that it may be exercised in utter disregard of the other; both cannot be unqualifiedly exercised at the same time. It is within the power of the Court to decide whether appellants should be denied their right to conduct their business free from unjustifiable interference by respondents, or whether respondents' right of freedom of speech should be reasonably limited."

The opinion of Mr. Justice Brandeis in *Senn v. Tile Layers' Union*, 301 U.S. 468, followed the current ruling strongly in the new direction—the direction not of social dogma, but of increased "deference to legislative judgment." "Whether it was wise," he said, (now speaking for the Court and not in dissent), "for the State to permit the Unions to picket, is a question of its public policy—not our concern."

Mr. Justice Frankfurter, in his concurring opinion in *A.F. of L. Union vs. American Sash Co.* reported in 335 U.S. No. 3, p. 525. Official Reports of this Court quoted the foregoing from Justice Brandeis in his opinion, and discussed at length the history of State Acts covering labor relations. He said in part:

> "Whether it is preferable in the public interest that Trade Unions should be subjected to State intervention, or left to the free play of social forces, whether experience has disclosed 'Union unfair labor practices,' and if so, whether legislative correction is more appropriate than self discipline and the pressure of public opinion—these are questions on which it is not for us to express views."

He went on to say on page 555, after discussing the value of trial and experiment with State Laws affecting labor, and saying that while the function of Courts, when legislation is challenged, is merely to make sure that the Legislature has exercised an allowable judgment, and not to exercise their own judgment, whether a policy is within or without "the vague contours" of due process, and further "in the day to day working of our democracy it is vital that the power of the non-democratic organ of our Government be exercised with rigorous self restraint. Because the powers exercised by this Court are inherently oligarchic." And on page 557, after discussing the duties of this Court, said:

> "Matters of policy, however, are by definition matters which demand the resolution of conflicts of

values, and the elements of conflicting values are largely imponderable" * * * "and obviously the proper forum for mediating the clash of feelings and rendering a prophetic judgment is the body chosen for these purposes by the people. Its functions can be assumed by this Court only in disregard of the historic limits of the Constitution."

We are not unmindful of the *Swing* case, 312 U.S. 21-85 L. Ed. 855, and of *Cafeteria Employees Union vs. Angelos*, 320 U.S. 293, 88 L. Ed. 58, but we believe they are distinguishable from the case at bar even under the free speech doctrine.

Our Court held

"That said picketing was coercive, and, therefore, an injunction prohibiting the same did not infringe the defendants' right for freedom of speech guaranteed by the 1st and 14th Amendments to the Constitution of the United States." (R. 16)

Appellants in their brief to this Court, in support of their petition for a writ herein, stated that the question presented "is the constitutional guaranty of freedom of communication infringed by the common law policy of a State forbidding peaceful picketing by a Labor Union, where there is no immediate employer-employee dispute." Our statute forbidding coercion of employers heretofore set out, is not common law policy, but one deliberately passed by our Legislature, one which it had the authority to pass.

Picket lines thrown out in this State by the American Federation of Labor under the orders of "Dave Beck" is more than speech. It is an order which from past experiences of Union People and the public in general, is a compulsion, one that the laboring people and all of us have been taught to listen to and obey, and it is known that to disobey or ignore it, is dangerous. If picketing here is speech, it is certainly much more. However apparently peaceful it may be carried on, it possesses elements of compulsion upon the persons picketed which bear little relation to the communication to anyone of information or of ideas. That was the particular idea which caused the men trying to deliver supplies to respondents to stop, look and turn back, and caused them to refuse to make any deliveries.

The picket line is commonly resorted to because of these elements, which means more than any force of argument contained in it to give it the power it possesses. To fail to recognize these facts is to put reality aside, all as said in the Massachusetts Court in *Soverall v. Demers*, 76 N.E. (2d). 12, 2 A.L.R. (2d) 1190, which held that picketing, although done without disturbance, threat or forceful interference with customers (peaceful picketing) was unlawful under the State law, and not in the exercise of the constitutional rights of freedom of speech. The Court said:

> "If picketing is speech it is certainly much more. However peacefully it may be carried on it

possesses elements of compulsion upon the persons picketed which bear little relation to the communication to anyone of information or of ideas. And resort is commonly had to it precisely because of these elements which much more than any force of argument contained in it give it the power it possesses. To fail to recognize these facts is to put reality aside.

"It would seem threfore that even if picketing is constitutionally protected in its aspects as speech, it must, because of its other aspects, be subject to some degree of regulation as to circumstances, manner and even object, lest orderly existence be submerged in a flood of picketing by groups of people having no peculiar rights of their own, to make other people do what they do not wish to do, and as free men are under no obligation to do."

The State of Washington finally was led by the force of public opinion to enact our public policy Statute under the title of "Labor Law" found in Sec. 7612-2, Rem. Rev. Stat. (Sup.) of 1933 fixing our policy relative to labor matters, and it recited that whereas under prevailing economic conditions the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore he should be free to decline to associate with his fellows, it was necessary, the court said, that he have full freedom of association; and we believe therefore it must be held that,

under the above, he can work for himself if he finds it preferable; and that to picket him to make him join with others in a union or association, is in disregard of the law of this State and unlawful.

Referring to the *Wohl* case, the Washington Court said:

> "The facts of the case at bar present no such appealing picture in favor of the appellants. Local 882 on whose behalf appellant Local 309 set up the picket line, in front of respondents' place of business, represents the used-car salesman in the Seattle area. Of 115 such concerns, only ten employ any help at all, the remainder being operated exclusively by their proprietors. From this fact, the conclusion seems irresistible that the Union's interest in the welfare of a mere handful of members (of whose working conditions no complaint at all is made) is far outweighed by the interests of individual proprietors and the people of the community as a whole, to the end that little businessmen and property owners shall be free from dictation as to business policy by an outside group having but a relatively small and indirect interest in such policy."

The issue in the *Swing* case, 312 U.S. 321, as stated by the Court, is the constitutional guaranty of freedom of discussion infringed by the common law policy of a State forbidding resort to peaceful picketing merely because there is no immediate employer-employee dispute. The Court said, "The right of free communication cannot therefore be mutilated by denying it to workers in a dispute with an employer, even though

they are not in his employ." * * * "Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution."

In *Drivers' Union v. Meadowmoore Co.*, from Ill. 312 U.S. 294, the Court said:

> "The place to resolve conflicts in the testimony, and its interpretations, was in the Illinois courts and not here. To substitute our judgment for that of the State Courts is to transcend the limits or our authority, and to do so in the name of the 14th Amendment in a matter peculiarly touching the local policy of a State regarding violence, tends to discredit the great immunities of the Bill of Rights."

We can interject here that our State Supreme Court said:

> *"We now find and here declare that the picketing activity conducted by Local 309 at the instance of Local 882, constituted coercion, and was therefore unlawful."* (R. 26).

In the *Meadowmoore* case, above, Justice Frankfurter said:

> "Just because these industrial conflicts raise anxious difficulties, it is most important for us not to intrude into the realm of policy making by reading our notions into the constitution."

In *Peters v. Central Labor Council* (Or.), 169 Pac. (2d) 874, the Court said:

> "It is significant that in those cases where the Supreme Court identified picketing with free speech, no unlawful purpose of the picketing was involved. That courts may take into consideration the purpose of the picketing is established by the great weight of authority. (Citations)

In the *Swing* and several other cases where this Court identified picketing with free speech, no case seemed to involve an unlawful purpose. It was not unlawful in the State where the *Swing* case arose to do what was done by the picketing.

In *R. H. White Co. v. Murphy* (Mass.), 38 N.E. (2d) 685, on page 691, the Court said:

> "It there appears that the Thornhill, Carlson and Swing cases are distinguishable in the fact that in none of them did it appear that the picketing was in violation of any valid statute or ordinance, or that it was for an unlawful purpose."

It was found in the following case that the methods adopted by Union to induce customers to breach their contracts with the Master Painters were unlawful, and for an unlawful purpose and the Court, in *Parker Paint & Wall Paper Co. vs. Local Union No.* 813, 87 W. Va. 631-105 S.E. 911, 16 A.L.R. 222 said:

> "It is not clear just what reasons dictated the acts contained in the Bill. * * * If for the purpose of preventing a member of the Master Painters from laboring with its hands in performing his own contracts, it is unlawful. A man's labor is his most sacred asset. It is often his only capital, and as long as he exerts it without injury to others,

> Government will protect him. A Government which imposes taxes and other public duties, even going so far as to demand life for its defense, and which will not protect its subjects in the enjoyment of life and liberty with the means of acquiring property and of pursuing and obtaining happiness and safety, is not worthy of the name of Government, nor of the support of its subjects."

The Union was enjoined. This argument would seem to apply to the case at bar, as relating to respondents. In the case at bar, Mr. Hanke, the father, had three sons whom he had brought up, educated and the father and sons had acquired ability as automobile mechanics, and he doubtless was very happy to have them all in business with him and making a living, each helping the other; but this apparently could not go on for the Union said it couldn't—they must join the Union and do business along certain lines and rules fixed by outsiders. The testimony of respondents was to the effect that it was impossible for them to continue in business if they had to operate under the contract rules, as demanded by the Union as to hours and days of work (R. 81) (R. 84). A copy of proposed contract is read into testimony (R. 75).

In *Campbell vs. Motion Picture Machine Operators' Union*, 151 Minn. 220, 186 N.W. 781, the State had an Anti-Trust Act very like the Sherman Anti-Trust Act, and the Court held that this Act had been violated by Union picketing, after its demands that

the plaintiff have his machine operated by union men. Their rules provided that an employer in that business could not join the Union and could not operate a machine himself. The Court held the Union purposes of the picketing in question was unlawful.

In *Silkworth vs. Local No. 575 of A.F.L.* (Mich), 16 N.W. 145, the facts are that plaintiffs were engaged in business of selling gasoline and fuel oil to dealers and consumers. The Union demanded that they place all of their drivers in the Union and they (the employers) pay their fees for joining, and upon plaintiffs' refusal the Union placed a picket line about their plant. There was no labor dispute, and no strike and no violence. The Court held there was no bona fide labor dispute with anyone and that the demand of the Union was illegal, unjust and extortionate, particularly in demanding that the plaintiffs pay initiation fees for their men, and issued an injunction against the picketing.

In New York in numerous cases, it was held that no labor dispute existed and that an injunction would lie in cases like this—where the plaintiffs were two brothers and a sister, conducting a small retail fish store as partners, discharging their sole employee at the expiration of their contract with the Union, because of insufficient business. The Union thereupon sought by picketing to induce them to enter into a new contract under which they would agree to engage un-

ion labor in the future, if the need for employees should arise. The above case is entitled *Miller vs. Fish Workers Union* (1939), 170 Misc. 713-11 N.Y.S. (2d) 278. The injunction was granted against the picketing of plaintiffs premises by the defendant Union. In New York there is the Little Norris-LaGuardia Act.

In *Carpenters and Joiners Union vs. Ritters' Cafe*, 315 U.S. 722, the fact showed that Ritter was engaged in business alone, and did not employ labor, and the Carpenters' Union picketed his cafe. The picketing was enjoined by the State Court. In sustaining the power of the State Court to do so, Justice Frankfurter, speaking for the Court, said:

> "The economic contest between employer and employee has never concerned merely the immediate disputants. The clash of such conflicting interest inevitably implicates the well being of the community. Society has therefore been compelled to throw its weight into the contest. The law has undertaken to balance the effort of the employer to carry on his business free from the interference of others against the effort of labor to further its economic self-interest. And every intervention of Government in this struggle has in some respect abridged the freedom of action of one or the other, or both.
>
> "The task of mediating between these competing interests has, until recently been left largely to judicial lawmaking and not to legislation . . . the right of the state to determine whether the common interest is best served by imposing some restrictions upon the use of weapons for inflicting

economic injury in the struggle of conflicting, industrial forces has not previously been doubted.

* * *

"But the circumstance that a labor dispute is the occasion of exercising freedom of expression does not give that freedom any greater constitutional sanction or render it completely inviolable. Where, as here, claims on behalf of free speech are met with claims on behalf of the authority of the State to impose reasonable regulations for the protection of the community as a whole, the duty of this Court is plain."

In the *Bantista vs. Jones* (Cal.) 155 P. (2d) at 343, relative to facts in that case, the Court said:

"On the other hand, a person has the right to own and control his own business, work in that business with his own hands, refuse to employ workers for whom he has no need, and to procure merchandise or products without which the business could not operate. It is these conflicting interests which must be weighed in determining the respective rights of the parties."

In *Giboney vs. Empire Storage & Ice Co.* (Mo.), 336 U.S. 490-69 S. Ct. R. 684. The union had as members 160 of 200 retail ice peddlers who drove their own trucks, and began efforts to induce all to join. They sought to obtain an agreement from all wholesalers not to sell to non-union men. Empire refused and its place was picketed. The avowed purpose was to compel it to stop selling ice to non-union men. The Missouri statute made such an agreement as demanded a crime. The men furnishing supplies to Empire refused to

cross the picket lines to make deliveries. Empire's business was nearly ruined. Under the Missouri law, if it had refused to sell to the non-union men, it could have been subjected to triple damages so that it appealed to the court for a restraining order.

The union asserted a right to continue doing what they were doing, under the right of free speech as guaranteed. The injunction was granted by the trial court and sustained in the Supreme Court of that state and Empire appealed to the Supreme Court of the United States.

The union urged that their right to publish notice of their grievances by picketing was superior to all others and that all attention must be focused upon their lawful purpose to improve labor conditions, and the fact that they were breaching state laws in doing so was merely incidental to their lawful purpose. The court said, while the State of Missouri is not a party to this case it was plain that the basic issue was whether Missouri or a labor union had paramount constitutional power to regulate and govern the manner in which certain trade practices should be carried on in Kansas City, Missouri; that Missouri has by statute regulated trade one way. The appellant union members have adopted a program to regulate it another way. The state has provided for enforcement of its statutory role by imposing civil and criminal sanctions; that the

union had provided for enforcement of its role by sanctions; against union members who cross picket lines.

The court, speaking through Justice Black, held "that the state's power to govern in this field was paramount and that nothing in the constitutional guaranties of speech or press compels a state to apply or not to apply its anti-trade law to groups of workers, business men or others. It was added "of course this court does not pass on the wisdom of the Missouri statute."

In *Duplex Printing Co. vs. Deeming*, 254 U.S. 443, at page 488, 41 S. Ct. 172, at page 184, 65 L. Ed. 349, 16 A.L.R. 196. On that page the opinion stated:

> "The conditions developed in industry may be such that those engaged in it cannot continue their struggle without danger to the community. But it is not for judges to determine whether such conditions exist, nor is it their function to set the limits of permissible contest and to declare the duties which the new situation demands. This is the function of the legislature which while limiting individual and group rights of aggression and defense, may substitute processes of justice for the more primitive method of trial by combat."

CONCLUSION

In a brief summary of the question before us, we have the following salient features:

1. Respondents constitute a partnership of father and sons, employing no help and endeavoring to establish a small business.

2. No one questions the conclusiveness of the record that the picketing was coercive.

3. That the picketing was not for organizational purposes but for the sole purpose of compelling respondents to become members of a certain Union with whom they wanted no affiliation, and which was contrary to the express statutes of the State of Washington; or join others in a contract in restraint of trade, contrary to the statutes and laws of the State of Washington, and possibly the Anti-trust laws of the Federal Government.

4. That under the repeated expressions of this Court, the elements of recognized State rights, included the authority to enact legislation controlling the extension of organized union activities, beyond the boundaries prescribed by the First Amendment to the United States Constitution, commonly referred to as the right to freedom of speech; and on the face of the record, the Statutes of the State of Washington, with its interpretation by the State Supreme Court, seems to naturally align itself with other states passing similar legislation, including the States of Missouri, Arizona and North Carolina, wherein this Court has recently and effectively held that such legislation was corrective and appropriate.

All of the foregoing summaries do seem to indicate that the Supreme Court of the State of Washington correctly interpreted the State laws as well as the Fed-

eral Laws and Statutes, but if this is not clearly the case, would it not be well to re-examine the principles in order that there may be a fair and just application of these principles to the case of these respondents?

The respondents here have done nothing morally wrong, unless we determine that it is wrong for a small business to establish itself by the only known method —indefatigable effort and hard work. When the Courts of Chancery were first established, it was for the purpose of correcting in some measure the rigorous injustice of the common law, and so the Courts of equity builded step by step a system of jurisprudence that was fair to minorities. Throughout our Courts have recognized that conditions change from one generation to another, and that the laws of equity and justice must necessarily change with them. There was a time in our Country's history when it was deemed wise to establish a protective tariff to enable small business to prosper, and this was described by the "Great Commoner" as a policy "to enable infant industries to stand upon their feet, but these industries had grown so large that they could not only stand upon their own feet, but walk all over the feet of other people." At the turn of this century organized labor may have been a weakling, but today no one with a penchant for accurate statements would suggest that labor unions are still in that classification. On the other hand, the pendulum has swung very far indeed in the opposite direction, and now it

is the real small business, the minorities, who need the aid of the Courts. The test of a real Democracy is the extent to which it goes to protect minorities, as contrary to that other political philosophy that the "ends justify the means," and the minorities may be sacrificed to those ends. Let us not be deceived. The small business man is now "the forgotten man." He must be permitted to live and expand if we are to maintain a healthy and vigorous industrial growth. No one can deny the facts of history, that greed and corruption have thrived in the huge corporations known as "Big Businggs." Let us not sanction the same results to be brought about through the utter disregard of the rights of individuals, by the power and bigness of the Labor Unions.

Respectfully submitted,

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